

ORIGINAL

2 to CV

(92)
8-13-
JC

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GREENE/GUILFORD ENVIRONMENTAL :
ASSOCIATION, a non-profit corporation :
incorporated under the laws of the :
Commonwealth of Pennsylvania, CITIZENS :
FOR PLANNED COMMUNITY GROWTH, :
an unincorporated association organized :
under the laws of the Commonwealth of :
Pennsylvania, PAUL B. AMBROSE, JOHN G. :
ENDERS, CHARLES F. RAHAUSER, BETSY :
RAHAUSER, DOUGLAS A. WARNOCK, U.X. :
VAGNERINI, THOMAS W. BUNDY, :
STEPHEN P. BUCHER, ROGER J. :
ROBERTSON, JAMES A. STRITE, JR., DAVID :
A. GUTHRIE, :

Plaintiffs :

v. :

KEN WYKLE, Administrator, Federal :
Highway Administration, ROBERT GATZ, :
Federal Highway Administration, :
Defendants :

and :

BRADLEY L. MALLORY, Secretary for :
The Department of Transportation, :
Commonwealth of Pennsylvania, :
Intervenor. :

CIVIL ACTION NO.
1:CV-01-0910

(Judge Rambo)

FILED
HARRISBURG, PA

AUG 12 2002

MARY E. D'ANDREA, CLERK
Per
Deputy Clerk

REPLY IN SUPPORT OF THE MOTION TO STRIKE
FILED BY DEFENDANTS AND INTERVENOR

On August 1, 2002, the defendants and the intervenor (the "moving parties") filed a motion to strike the plaintiffs' briefs in support of their motion for summary judgment and in opposition to the defendants/intervenor's motion for summary judgment. On or about August 9, 2002, the plaintiffs filed a brief in opposition to that motion. The moving parties now file this reply.

Plaintiffs' brief fails to address the fundamental issue presented in the motion to strike, that is, the local rules of this Court prohibit a party from incorporating all or a portion of one brief into the body of another brief. Instead, plaintiffs make two arguments. First they contend that the moving parties have also erred by making reference to their statement of material facts within the body of their brief, in lieu of repeated string citations to every page of the administrative record which supports a particular factual statement. Second plaintiffs complain, repeatedly and inexplicably, that the agencies took the "unusual, proactive" step of filing a motion for summary judgment before the plaintiffs did so, implying that this was somehow prejudicial to the presentation of plaintiffs' case.

In response to the first argument, the rules of this Court require a statement of material facts in support of a motion for summary judgment. LR 56.1. That same rule further requires that "[s]tatements of material facts . . . shall include references to the parts of the record that support the statements." Id. The rules do not prohibit references to the statement of material facts within the brief, nor do the rules require that record references contained in the statement of material facts be repeated in their entirety within the brief.


As to the second argument, nothing in the Federal Rules of Civil Procedure, nor the Local Rules of this Court nor the

customary practice in federal court requires the defendants to refrain from filing a motion for summary judgment until the plaintiffs have had an opportunity to do so. Fed. R. Civ. P. 56(b). Indeed, Rule 12 of the Federal Rules of Civil Procedure even anticipates that such a motion might be filed in lieu of an answer in an appropriate case. Fed. R. Civ. P. 12(b).

WHEREFORE, the moving parties respectfully ask that the Court grant their motion to strike.

RESPECTFULLY SUBMITTED

THOMAS A. MARINO
United States Attorney


ANNE K. FIORENZA
Assistant United States Attorney
Federal Building, 2nd Floor
228 Walnut Street
P.O. Box 11754
Harrisburg, PA 17108-1754
(717) 221-4482

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ROBERTSON, JAMES A. STRITE, JR., DAVID	:	
A. GUTHRIE,	:	
Plaintiffs	:	
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Highway Administration, ROBERT GATZ,	:	
Federal Highway Administration,	:	
Defendants	:	
and	:	
BRADLEY L. MALLORY, Secretary for	:	
The Department of Transportation,	:	
Commonwealth of Pennsylvania,	:	
Intervenor.	:	

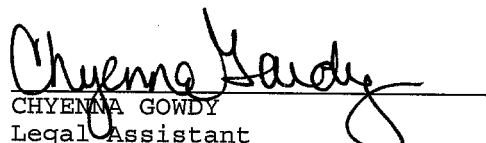
CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

On this 12th day of August, 2002, she served a copy of the foregoing document by placing said copy in a postpaid envelope addressed to the persons hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania to:

Kenda Jo M. Gardner, Assistant Counsel
Pennsylvania Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105

Thomas Alan Linzey, Esquire
Community Environmental Legal Defense Fund
2859 Scotland Road
Chambersburg, PA 17201


CHYENNA GOWDY
Legal Assistant